Filed 5/24/16 Adoption of Alyssa D. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

Adoption of ALYSSA D., a Minor.	
KELLIE L. et al., Plaintiffs and Respondents, v. KIMBERLY P., Defendant and Appellant.	F072342 (Super. Ct. No. AD000525) **OPINION**

APPEAL from a judgment of the Superior Court of Merced County. Brian L. McCabe, Judge.

Law Office of Allen Broslovsky and Allen Broslovsky for Defendant and Appellant.

Law Offices of C. Logan McKechnie and C. Logan McKechnie for Plaintiffs and Respondents.

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Kimberly P. (mother) appeals from a judgment granting a petition declaring her daughter Alyssa D. (minor) free from her parental custody and control, pursuant to

Family Code section 7822.[1] Mother contends there is insufficient evidence to support the trial court's findings. She also contends her due process rights were infringed upon by various failings on the part of the trial court. We affirm.

STATEMENT OF THE CASE AND FACTS

Background Facts

P.D. (father) and mother were married in April of 2010, and minor was born in May of 2011. The two separated in August of 2011, and mother and minor moved out of the family residence in San Diego County and into minor's maternal grandmother's home in Tulare County.

In January of 2012, mother was arrested for possession of a controlled substance (methamphetamine) and driving under the influence. Mother received, but did not complete, a deferred entry of judgment program.

In May of 2012, mother went in drug rehabilitation and father was given custody of minor, although during May and June of 2012 minor continued to reside with either maternal grandmother in Tulare County or maternal aunt and uncle, Kellie L. and Tom L. (together respondents), in Merced County. In July of 2012, father took minor back with him to San Diego County because he did not wish to pay maternal grandmother the child support she demanded.

In August of 2012, mother was awarded supervised visits, to take place once a month if mother provided a clean drug test. Mother saw minor once in October of 2012 and once in November of 2012, which was her last contact with minor.

In February of 2013, mother was arrested on a warrant for driving on a suspended or revoked license. In May of 2013, she was arrested for noncompliance with her deferred entry of judgment program's terms and conditions. That same month, father was awarded sole legal and physical custody of minor, with mother's supervised

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[1] All further statutory references are to the Family Code unless otherwise stated.

visitation suspended until further order of the court. No subsequent action was filed by mother to reinstate her custody rights.

In August of 2013, mother was arrested for possession of a controlled substance (methamphetamine). She received, but did not complete, a Proposition 36 drug program.

In December of 2013, father placed minor with respondents in Merced County, because father's girlfriend no longer wished to care for her (father was in the military). Minor has been in respondents' care since then.

In January of 2014, mother was arrested for possession of a controlled substance, placed on probation, and ordered into a residential treatment program.

In March 2014, mother telephoned Kellie L. and requested visitation. She called again September 23, 2014, and requested visitation, but Kellie L. would not allow it, stating it would confuse minor.

Adoption Request and Petition to Declare Minor Free from Parental Control and Custody

On September 24, 2014, respondents filed an adoption request and a petition to declare minor free from the parental control and custody of mother. Attached to the petition was a consent signed by father for the adoption. Concurrently, Kellie L. filed a petition for appointment of temporary guardian and a petition for appointment of guardian of minor.

At the October 31, 2014, hearing on the petition to declare minor free from parental custody and control, mother and respondents were present. Counsel was appointed for minor. The trial court stayed the guardianship matter, maintained the child's placement status quo, and ordered the case to trail the adoption matter, which was continued to December and subsequently to January 14, 2015, for contested hearing.

Prior to the scheduled hearing, minor's counsel filed a confidential report and recommendation. A court investigator filed a report pursuant to section 7850 and 7851.

In response, mother filed a motion to strike the confidential report and recommendation of minor's counsel and filed a request that minor's counsel be disqualified and new counsel appointed.

At the scheduled hearing, the trial judge who had heard all previous matters pertaining to the adoption was not available, and the contested hearing was continued. On mother's request and over objection from minor's counsel and respondents, the trial court did order a one-hour supervised visit between mother and minor to take place before the rescheduled February 11, 2015, hearing.

Hearing on Petition

The contested hearing was held over two days, February 11 and 20, 2015. At the hearing, the trial court first heard argument on mother's motion to strike the report of minor's counsel and remove her from the case, claiming counsel's opinions and recommendations were not admissible. The trial court denied the motion, stating it was well aware of "the difference between what's admissible and not admissible," and it would "strike the opinions of [m]inor's counsel, but the factual information that's contained therein will remain."

Mother's counsel then argued the court's investigator's report should not be accepted as it was "woefully inadequate." Mother's counsel argued the investigator did not interview mother or respondents, only that she met with minor, who she described as "happy; therefore, the petition should be granted." The trial court denied the request, stating the report was to mother's advantage because it was "so sparse on facts and certain points" and, in any event, the trial court was not bound by the reports and "makes its own decision."

Kellie L. testified that minor was her biological niece, that she was a stay-at-home mom, and that she and her husband first began caring for minor in May of 2012 due to mother's substance abuse issues. Minor was with them for five weeks and then, after some interruption, returned to them in December 2013 at father's request and had been

living with them since then. According to Kellie L., mother contributed no financial support for minor. Other than one visit in 2012, Kellie L. did not recall when mother last saw minor. Kellie L. did receive a telephone call from mother in March of 2014, during which she told mother minor was well taken care of. Kellie L. did not mention adoption to mother. Kellie L. also recalled receiving one email from mother in October 2014, after the petition was filed, requesting visitation. Kellie L. responded to her that she thought they should maintain the status quo until proceedings were completed. From December 2013 until September 2014, mother made no contact with Kellie L., with the exception of the call from mother in March 2014.

Kellie L. testified she had an "agreement" with father that she would raise minor, which she did not communicate with mother as she had not heard anything from her, nor was she sure "whether she was even capable of being a mother." Kellie L. took no steps to contact mother prior to seeking adoption.

Mother testified she was currently living in a sober living home in Berkeley and working part time at a coffee shop. Mother acknowledged that she did not visit minor between December of 2012 to the present, and she made no attempt to modify the order granting father custody. Mother asked Kellie L. in March 2014 to bring minor for a visit to see her while she was in the rehabilitation treatment program. Mother acknowledged that she could make telephone calls while in the various treatment programs she attended, and she could leave the facility for four- to six-hour stints if she "planned well." She also acknowledged she provided no financial support for minor while in respondents' care, although maternal grandmother paid father on behalf of mother $145 a month for support in October, November and December of 2013.

Mother testified she planned to graduate from her treatment program on May 23, 2015, and move to Fresno, where she would stay with a sister and niece. Mother acknowledged she did not have contact with minor while minor was in father's care because she did not comply with drug testing orders. Mother testified minor was born six

and a half weeks early and, at the time, mother tested positive for drugs. Mother acknowledged she knew where minor was living between November of 2012 and January of 2014, and that she did have telephone privileges, but did not see minor or talk to her on the phone. Mother claimed, although she could leave the drug treatment facility with a pass, could receive visitors, and could make phone calls, she did not get a hold of minor or try to resolve visitation or custody because she was in a treatment facility "to work on myself and focus on me getting better so I could then some day be a mother to my daughter." While mother wished to resume her relationship with minor, she could not do so "at this moment," because she was focusing on her sobriety and because of her living and financial situation.

Mother claimed that, in her telephone call with Kellie L. in March of 2014, she thanked Kellie L. for taking care of minor and Kellie L. assured her she had no intention of keeping minor from mother. But when she asked Kellie L. to bring minor to visit mother, Kellie L. said no because she did not want to confuse minor. Mother claimed that, after March 2014, she tried to telephone Kellie L. at least once a week and Kellie L. would not answer the telephone. She claimed to have left minor a voicemail on her birthday. Mother called Kellie L. when she was out of the residential treatment center on September 22 or 23, 2014, and left Kellie L. a message with a direct telephone number to reach mother. The following day, Kellie L. called mother and asked for her address; Kellie L. then used the address to serve mother with adoption papers. Mother provided no telephone records.

In October of 2014, mother emailed Kellie L. to thank her for taking care of minor and asked to set up visitation. Kellie L. informed mother that, due to the pending case, no visitation would be allowed.

Mother testified she never intended to abandon minor. According to mother, she spoke to the court investigator twice, once for 10 minutes, the other for about 20 minutes.

Mother did not want to take minor from respondents, but wanted to slowly build a relationship with minor and coparent with them.

Prior to adjourning for the day, the trial court noted the possibility that section 7800 et seq. might not be the applicable statute under which the proceedings should be heard. Mother argued Probate Code section 1516.5 was the applicable code and that guardianship should be granted rather than declaring minor free from her parental custody and control under section 7800. The hearing was continued to February 20, 2015.

At the February 20, 2015, hearing, Tom L. testified the court investigator came to their home once and they met with her once in her office.

Because the trial court reminded mother's counsel that the court would not consider the court investigator's opinion in its decision, mother's counsel chose not to question the court investigator, other than to ask whether she knew minor had "negative behavioral problems" prior to writing the report. The investigator stated she did but chose not to include that in the report.

Following argument by all parties, the trial court took the matter under submission.

Trial Court Ruling

In its subsequent findings and rulings on the petition, filed May 19, 2015, the trial court proceeded under section 7822 and found unpersuasive mother's argument that the present proceedings were governed by the requirements of Probate Code section 1516.5. In its ruling granting the petition, the trial court found, pursuant to section 7822, that mother abandoned minor for a period of more than six months by failing to communicate with her or provide any support. In addition, the trial court found it was in minor's best interests to be adopted by respondents.

The trial court noted that, between November 2012 and the February 2015 hearing, with the exception of a one-hour court-ordered visit, mother had had no contact

with minor. Mother admitted she knew where minor resided during that time, but she made no attempts at physical contact or communication with her. Mother provided no support for minor between November of 2012 and the February 2015 hearing, other than directing maternal grandmother to make payments in October, November and December of 2013 to father, which maternal grandmother did, to ensure continued access to minor.

The judgment declaring minor free from parental custody and control was filed July 14, 2015.

DISCUSSION

I. DID THE JUVENILE COURT ERR BY GRANTING THE MOTION TO DECLARE MINOR FREE FROM CUSTODY AND CONTROL?

Mother contends there is insufficient evidence to support the trial court's finding that she intended to abandon minor within the meaning of section 7822. Specifically, mother contends the trial court failed to take into account that she was "tricke[d]" into inaction by respondents and that her inability to support minor was due to her participation in a drug treatment program. We disagree.

Applicable Law

A proceeding to have a child declared free from the custody and control of a parent may be brought under section 7822 if the parent has abandoned the child. As applicable here, abandonment occurs when "[t]he child has been left by both parents or the sole parent in the care and custody of another person for a period of six months without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child." (§ 7822, subd. (a)(2).) Thus three elements must be met: (1) the child must be left with another; (2) without provision for support or communication from a parent for a period of six months; and (3) all such acts were done "'"with the intent on the part of such parent … to abandon [the child]."' [Citation.]" (*Adoption of Allison C.* (2008) 164 Cal.App.4th 1004, 1010 [addressing similar requirements of § 7822, subd. (a)(3)].)

“‘“‘“‘In order to constitute abandonment there must be *an actual desertion*, accompanied with an intention to entirely sever, so far as it is possible to do so, the parental relation and throw off all obligations growing out of the same.’” [Citations.]’ [Citation.] Accordingly, the statute contemplates that abandonment is established only when there is a physical act – leaving the child for the prescribed period of time – combined with an intent to abandon, which may be presumed from a lack of communication or support.” (*In re Jacklyn F.* (2003) 114 Cal.App.4th 747, 754; § 7822, subd. (b) [“failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon”].) To overcome the statutory presumption, the parent must make more than token efforts to support or communicate with the child. (§ 7822, subd. (b) [“If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent”]; *In re B. J. B.* (1986) 185 Cal.App.3d 1201, 1212.) Intent to abandon may be found on the basis of an objective measurement of conduct, as opposed to stated desire. (*In re B. J. B.*, *supra,* at p. 1212.) “The parent need not intend to abandon the child permanently; rather, it is sufficient that the parent had the intent to abandon the child during the statutory period.” (*In re Amy A.* (2005) 132 Cal.App.4th 63, 68.)

Standard of Review

We apply a substantial evidence standard of review to a trial court’s finding under section 7822. (*In re Amy A.*, *supra,* 132 Cal.App.4th at p. 67.) “Although a trial court must make such findings based on clear and convincing evidence (§ 7821), this standard of proof “‘is for the guidance of the trial court only; on review, our function is limited to a determination whether substantial evidence exists to support the conclusions reached by the trial court in utilizing the appropriate standard.”’ [Citation.] Under the substantial evidence standard of review, ‘“[a]ll conflicts in the evidence must be resolved in favor of the respondents and all legitimate and reasonable inferences must be indulged in to uphold the judgment.”’ [Citation.]” (*Adoption of Allison C.*, *supra,* 164 Cal.App.4th at

pp. 1010-1011, fn. omitted.) All evidence most favorable to the respondent must be accepted as true and that which is unfavorable discarded as not having sufficient verity to be accepted by the trier of fact. (*In re Gano* (1958) 160 Cal.App.2d 700, 705.) "Abandonment and intent '"are questions of fact for the trial [court] …. [Its] decision, when supported by substantial evidence, is binding upon the reviewing court. An appellate court is not empowered to disturb a decree adjudging that a minor is an abandoned child if the evidence is legally sufficient to support the finding of fact as to the abandonment [citations]."' [Citation.] 'The appellant has the burden of showing the finding or order is not supported by substantial evidence.' [Citation.]" (*Adoption of Allison, C., supra,* at p. 1011.)

Analysis

The first element of section 7822 required evidence that mother left minor in another person's care and custody for a period of six months. (§ 7822, subd. (a)(2).) Here, there is no question that minor had been in respondents' care since December 2013, when father asked that they take her. Mother herself acknowledged that she knew minor was with respondents since January of 2014.

There is also no question that there is substantial evidence to support the finding of the second element, that mother failed to communicate with minor or failed to provide for her support for a period of six months. The statute does not require that the parent fail to do both, which occurred here.

By her own admission, mother last saw minor in November 2012, when she was one and a half years old. Pursuant to the custody order of August 2012, mother's visits with the minor were contingent on court-ordered drug testing, which mother failed to follow through on due to her self-admitted addiction and inability to test clean. Minor moved in with respondents at father's request in December of 2013. Both mother and Kellie L. agree that mother first contacted Kellie L. sometime in March 2014. Kellie L. recalled receiving a telephone call from mother in March of 2014, during which she told

mother minor was well taken care of. Mother claimed, in that telephone call to Kellie L., that she thanked Kellie L. for taking care of minor and Kellie L. assured her she had no intention of keeping minor from mother. But when mother asked Kellie L. to bring minor to visit her, Kellie L. refused because she did not want to confuse minor. Mother claimed that, after March 2014, she tried to telephone Kellie L. at least once a week and Kellie L. would not answer the telephone. She claimed to have left minor a voicemail on her birthday, which would have been in May, and that she telephoned once in September 2014, just before the petition was filed.

In considering whether a parent has failed to communicate with a child, the trial court may consider the frequency with which the parent tried to communicate with the child, the genuineness of the effort under all the circumstances, and the quality of the communication that occurred. (*In re B. J. B., supra*, 185 Cal.App.3d at p. 1212.; *People v. Ryan* (1999) 76 Cal.App.4th 1304, 1316.) Here, mother's testimony regarding her purported attempts at communication with minor were contradictory and showed only cursory attempts. She first testified she was only able to call twice a month from the rehabilitation facility; she then testified she had weekly telephone privileges; she then testified she had to earn telephone privileges and would only be able to call if her weekly assignments were complete; she later testified she was able to use the telephone daily. Mother provided no telephone records to support her claim that she ever tried to contact minor. And, as noted by the trial court in its ruling, "Mother took no other action to communicate with the [m]inor [c]hild. Letters, cards, and gifts could have been mailed, but were not." There is substantial evidence to support the trial court's finding that mother failed to communicate with minor.

As for failure to provide support, mother contends the trial court failed to take into account her inability to make little, if any support payments, or the fact that respondents never sought any support from mother. Here, there was no evidence that respondents ever requested support, although there was evidence before the trial court that mother

either had the means to make support payments or to direct another to make support payments on her behalf, as mother had directed maternal grandmother to make child support payments to father in October, November and December of 2013. In any event, while a parent's failure to contribute to a child's support absent demand does not necessarily show abandonment, "such failure coupled with failure to communicate, may do so." (*In re Randi D.* (1989) 209 Cal.App.3d 624, 630.)

Finally, we consider whether the evidence supports the trial court's finding that mother had "an intent to abandon" minor. Mother contends there is insufficient evidence of her intent to abandon minor because, between December of 2013, when minor was placed with respondents, until September of 2014, when the petition was filed, mother did not take steps to protect her parental rights because she was "tricke[d]" into inaction by Kellie L.'s secretive plan to adopt minor "from the beginning," "which should be enough to overcome the presumption that [mother's] lack of support or communication was rebutted."

But the claim that mother was unable to communicate with or support minor due to Kellie L.'s actions, even if believed, does not in and of itself constitute a legal excuse for her failure to keep in touch or support minor. (*Adoption of Oukes* (1971) 14 Cal.App.3d 459, 467; *In re Maxwell* (1953) 117 Cal.App.2d 156, 166.) Mother is unable to explain why she was unable to utilize the avenues of contacting an attorney by telephone or scheduling a day pass to consult with a legal professional to discuss regaining her rights to visitation and/or custody of minor. Mother does not explain why, at any time after August of 2012, when she was ordered supervised visits, through the time of the filing of the petition in September of 2014, she never filed for a modification of custody and visitation through either the county agency where the custody order was originally made or where the adoption petition was filed. And, as noted by the trial court in its ruling, "No formal actions were taken to obtain visitation. Mother had experience with the court system, yet neglected to file any proceedings." The issue of credibility is

for the trier of fact to determine. Considering the totality of the circumstances and the conflicts in evidence reflected by the record, we are unable to state that the juvenile court was not justified in finding as it did. (*In re Conrich* (1963) 221 Cal.App.2d 662, 668.)

Because we find that the trial court did not abuse its discretion in granting the petition, we also find no merit to mother's claim that the trial court should have allowed a less drastic alternative because she was in the process of rehabilitative efforts. Mother is suggesting that she was "perfectly content to allow respondents to continue with the status quo; all [mother] wanted to do was have short visits with the child as she progressed in her rehabilitation efforts."

While mother's enrollment in drug treatment is commendable, minor's need for parental support and contact could not wait for mother to finally get clean and sober.

> "[A] child's need for a permanent and stable home cannot be postponed for an indefinite period merely because the absent parent may envision renewing contact with the child sometime in the distant future. (Cf. *In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080; *In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038 ['The reality is that childhood is brief; it does not wait until a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it.']; see also *In re Rikki D.* (1991) 227 Cal.App.3d 1624, 1632[, disapproved on other grounds in *In re Jesusa V.* (2004) 32 Cal.4th 588, 624, fn. 12] ['Children should not be required to wait while their parents grow up.'].)" (*In re Daniel M.* (1993) 16 Cal.App.4th 878, 884; see also *In re Adoption of Allison C., supra,* 164 Cal.App.4th at p. 1016.)

"Simply stated, a child cannot be abandoned and then put 'on hold' for a parent's whim to reunite. Children continue to develop, and the Legislature has appropriately determined a child needs a secure and stable home for that development. Consistent with the statutory purpose to serve the welfare and best interests of children by expeditiously providing a child with an opportunity for the stability and security of an adoptive home when those conditions otherwise are missing from the child's life [citations], we conclude that [the statute's] phrase 'intent … to abandon the child' does not require an intent to

abandon permanently. Rather, an intent to abandon for the statutory period is sufficient." (*In re Daniel M., supra*, 16 Cal.App.4th at p. 885.) "[T]he Legislature has determined that the state's interest in the welfare of children justifies the termination of parental rights when a parent failed to communicate with his or her child for at least [six-months] with the intent to abandon the child during that period, even though the parent desires to eventually reestablish the parent-child relationship." (*Id.* at p. 884.) "[A] child's interest in obtaining the stability and security of an adoptive home would be defeated if the intent to abandon requirement … were interpreted to 'allow an absent parent to totally forsake and desert his [or her] child for [more than six months] at a time without fear of [losing] parental rights simply because he [or she] had the intent to reestablish the parent-child relationship at some indefinite time in the future.'" (*Ibid.*)

Viewing the evidence in the light most favorable to the trial court's judgment, as we must, we conclude substantial evidence supports the judgment.

II. DID THE JUVENILE COURT DISREGARD MOTHER'S DUE PROCESS RIGHTS BECAUSE THE INVESTIGATION REPORT WAS INADEQUATE? BY ITS FAILURE TO GRANT MOTHER'S MOTION TO STRIKE MINOR'S COUNSEL'S REPORT AND APPOINT NEW COUNSEL? AND BY GRANTING THE PETITION PRIOR TO RECEIVING THE REQUIRED DEPARTMENT OF SOCIAL SERVICES REPORT?

Mother also contends her due process rights were violated because the investigator's report was inadequate; the trial court denied her motion to strike the report filed by minor's counsel and to appoint new counsel for minor; and by granting the petition prior to receiving the required Department of Social Services report. We address each contention and find no prejudicial error.

Investigator's Report

Section 7850 dictates the requirements of the investigations relating to the proceedings to declare a child free from parental custody and control. Specifically, section 7850 states,

> "Upon the filing of a petition under Section 7841, the clerk of the court shall, in accordance with the direction of the court, immediately notify the juvenile probation officer, qualified court investigator, licensed clinical social worker, licensed marriage and family therapist, or the county department designated by the board of supervisors to administer the public social services program, who shall immediately investigate the circumstances of the child and the circumstances which are alleged to bring the child within any of the provisions of Chapter 2 (commencing with Section 7820)."

The guidelines to which a court investigator must adhere when preparing his or her report is outlined in section 7851 and states the report shall include a recommendation of the proper disposition to be made in the proceedings in the best interest of the child and "shall include" a statement that the person making the report explained to the child the nature of the proceedings to end parental custody and control; a statement of the child's feelings and thoughts concerning the pending proceeding; a statement of the child's attitude towards the parent; and that the child was informed of their right to attend the hearing. (§ 7851, subds. (a), (b)(1)-(4).) If, as in this case, the child is too young to make a meaningful response, "a description of the condition shall satisfy the requirement" of subdivision (b). (§ 7851, subd. (c).)

Here, the court investigator's report filed January 12, 2015, stated minor did not understand the nature and effect of the proceedings and that it was in the best interest of the minor to grant the petition.

At the petition hearing, mother argued the investigator's report should not be accepted as it was "woefully inadequate" because the investigator did not interview mother or respondents, only that she met with minor, who she described as "happy; therefore, the petition should be granted." The trial court denied the motion, stating the report was in mother's advantage because it was "so sparse on facts and certain points" and that, in any event, the trial court "makes its own decision" and was not bound by the reports.

Mother now alleges the report submitted by the court investigator "lacked any information regarding the circumstances alleged by respondents which supported their petition to terminate parental rights. More specifically, absent from the report is any indication that the court investigator attempted to gather information regarding [mother's] alleged abandonment of the child; which the investigator was required to have done pursuant to … section 7850."

However, as noted in the recitation above, there is nothing in section 7851 which mandates the court investigator report the circumstances which are alleged to bring the child within the provisions of Chapter 2, commencing with section 7820.

In any event, even if we are to find the investigator's report lacking, mother has failed to demonstrate how she was prejudiced by the inadequacies of the report. (See *In re Marriage of E. & Stephen P.* (2013) 213 Cal.App.4th 983, 994 [trial court's failure to order investigator's report subject to harmless error analysis].) Moreover, based on the evidence before the trial court, including mother's own testimony, there was no reasonable probability that mother would have obtained a different result had a more thorough report been made.

Motion to Strike Report and Recommendation of Minor's Counsel

On October 31, 2014, the trial court appointed counsel for the minor, pursuant to section 3150. Pursuant to section 3151, minor's counsel is directed as follows:

> "(a) The child's counsel appointed under this chapter is charged with the representation of the child's best interest. The role of the child's counsel is to gather evidence that bears on the best interests of the child, and present that admissible evidence to the court in any manner appropriate for the counsel of a party. If the child so desires, the child's counsel shall present the child's wishes to the court. The counsel's duties, unless under the circumstances it is inappropriate to exercise the duty, include interviewing the child, reviewing the court files and all accessible relevant records available to both parties, and making any further investigations as the counsel considers necessary to ascertain evidence relevant to the custody or visitation hearings.

> "(b) Counsel shall serve notices and pleadings on all parties, consistent with requirements for parties. Counsel shall not be called as a witness in the proceeding. Counsel may introduce and examine counsel's own witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to represent the child adequately."

Minor's counsel filed a report and recommendation on January 9, 2015. In preparation for the report, minor's counsel stated she interviewed numerous individuals, including respondents, mother, maternal grandmother, mother's counsel, and the court investigator, and she reviewed the court file. After a recitation of the history of the case and a summary of the various interviews, minor's counsel recommended the petition be granted.

Mother filed a motion to strike minor's counsel's report and replace counsel. At the hearing on the motion, mother claimed minor's counsel's opinions and recommendations were not admissible. The trial court denied the motion, stating it was well aware of "the difference between what's admissible and not admissible," and it would "strike the opinion of [m]inor's counsel, but the factual information that's contained therein will remain."

Mother now argues minor's counsel's report was "replete with hearsay and assumption and opinions, all inadmissible and improper" and should not have been filed with the court.

Again, we note there is nothing in section 3151 which states there is a requirement that minor's counsel submit a report. In addition, we note the trial court stated specifically it would disregard the inadmissible evidence and strike the opinion of minor's counsel. We assume the trial court did so, and find no due process violation as a result of not striking the entire report.

Department of Social Services Report

Hearings were held February 11 and 20, 2015, on respondents' petition to declare minor free from parental custody and control. On May 19, 2015, the trial court issued its

findings and ruling grating the petition. The judgment declaring minor free from custody and control was filed July 14, 2015. On September 25, 2015, the Department of Social Services filed its information report in conformity with section 7663. Mother contends the trial court improperly granted the petition prior to receiving the required report and recommendation from the Department of Social Services.

Section 7663, in essence, provides guidelines for the Department of Social Services, to investigate the identity of the alleged natural father in an adoption case. The section is not applicable here, and granting the petition prior to receiving such a report was not improper.

DISPOSITION

The order is affirmed.

_____
FRANSON, J.

WE CONCUR:

_____
LEVY, Acting P.J.

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DETJEN, J.